



The Florida Senate

Interim Project Report 2004-124

December 2003

Committee on Criminal Justice

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REVIEW OF CHAPTER 948, F.S., CONCERNING PROBATION AND COMMUNITY CONTROL

SUMMARY

This report provides a broad overview of the community supervision system as set out in Chapter 948, F.S., including a description of the major categories of probation and community control. Recommendations are made for reorganizing sections according to subject area without substantive change to the law.

BACKGROUND

The current system for probation and community control programs began in 1975 when probation and parole officers (correctional probation officers) and responsibility for supervision of offenders in the community were removed from the authority of the Florida Parole Commission and placed under the control of the Department of Offender Rehabilitation. Prior to the "Correctional Organization Act of 1975," the Florida Parole Commission employed and directed all the probation and parole officers supervising offenders in the community and the prison system was a division of the Department of Health and Rehabilitative Services. The Department of Offender Rehabilitation created by this act was later renamed the Department of Corrections. The Department of Corrections has grown to become one of the largest parts of Florida Government, and the Florida Parole Commission has been reduced to a quasi judicial function concerning a shrinking pool of offenders, in large part because of the abolition of parole for offenders sentenced after October 1, 1983.

Chapter 948, F.S., has been amended to some degree in all but one of the last 30 years. As a result, some sections contain multiple programs and ideas and the chapter is not well-organized.

Overview

As of September 30, 2003, there were 152,681 offenders on some form of community supervision in Florida. This number fluctuates as offenders are added to supervision, are released from prison onto supervision, have their supervision revoked and are sent to prison, or successfully complete their term of supervision.

The following table illustrates the types of supervision and the number of offenders for each type:

Probation (active and active-suspense)	126,792
• Standard probation	105,972
• Drug offender probation	16,621
• Sex offender probation	2,694
• Administrative probation	1,505
Community Control	12,328
• Standard community control	11,998
• Sex offender community control	330
Pretrial Intervention	8,005
• Standard PTI	5,036
• Drug offender PTI	2,969
Post-Prison Release	5,549
• Parole	2,216
• Other post-prison release	3,333
Other supervision types	7

Two-thirds of the parolees are from out of state and are supervised by the department pursuant to an interstate compact for parole and probation supervision.

All the offenders listed above are under the supervision of the Department of Corrections. Those on probation, community control, and pretrial intervention are under the jurisdiction of the circuit court, and those on parole and some other form of post-prison release supervision are under the jurisdiction of the Parole Commission.

Who is Placed on Community Supervision?

People who are found to have committed crimes can be placed on some form of community supervision, such as probation or community control, by any court having jurisdiction over criminal actions. The statute recommends community supervision for offenders who appear not likely to reoffend and present the lowest danger to the welfare of society. Generally, this means those offenders whose sentencing guidelines score sheet does not recommend incarceration under the Criminal Punishment Code. There is also the possibility that a person can be diverted to a pretrial intervention program without having to go to trial or enter a plea, as will be discussed later.

Approximately one-fourth of the offenders on community supervision committed either a theft, forgery, or fraud as their most serious offense. Another one-fourth are on community supervision for committing a drug offense. Violent crimes, such as murder/manslaughter, sexual offenses, and robbery account for another one-fourth of the community supervision population. Of those placed on probation, 63 percent have no prior community supervision commitments and 87 percent have never been sentenced to prison. Of those placed into community control, 38 percent have no prior community supervision commitments and 81 percent have never been sentenced to prison. Of the nearly 153,000 persons on some form of community supervision, almost 95,000 a year will be removed from supervision and replaced by a slightly higher number of new admissions.

Who Manages Community Supervision?

The department supervises all of the offenders who are sentenced to some form of community supervision out of circuit court. Counties manage probation and other types of supervision originating in county court, but this may be contracted out to private entities. Private entities may also handle some pretrial intervention programs.

Types of Supervision

Probation

Probation is a term or sentence imposed by the court with standard statutory conditions as well as special conditions that may be imposed by the court. Probation lasts for a specific period of time that cannot exceed the maximum sentence for the offense. The first two conditions that apply to probation and all forms of supervision require the probationer to report to his or her correctional probation officer and permit the officer to visit the probationer at work, home, or elsewhere. This requirement ensures that contact is maintained throughout the term of probation.

Administrative Probation

A probationer who successfully completes half the term of probation and who represents a low risk of harm to the community may be placed on Administrative Probation. This is a non-reporting status, but periodic record checks are completed to verify that the offender has not violated the law.

Drug Offender Probation

Drug offender probation includes intensive supervision that emphasizes treatment of the offender. Correctional probation officers with specific training or experience are assigned to supervise drug offender probationers. The caseloads for these officers are limited to 50 offenders. In addition to the standard terms and conditions of probation, drug offender probation includes an individual treatment plan and additional surveillance and random drug testing.

Sex Offender Probation and Sex Offender Community Control

Sex offender probation and sex offender community control also includes intensive supervision that emphasizes treatment. As with any form of community control, it may include electronic monitoring. Like drug offender probation, officers with specific training or experience and with limited case loads are assigned to supervise sex offenders. Each offender in this program has an individualized plan of treatment. The standard terms and conditions of probation or community control apply to persons on sex offender probation, along with additional terms and conditions specified in the statutes. These conditions restrict the sex offender in terms of where he or she may live, work, and visit, with whom he or

she may associate, and when he or she may be outside the residence. The statute also requires DNA samples, polygraph testing, and active participation in sex offender treatment.

Community Control

Community control is a community-based punishment alternative to incarceration or regular probation. It includes supervised house arrest, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is intended for felons who are unsuitable for regular probation because of their criminal background or the seriousness of their crime, but for whom the court deems imprisonment to be unnecessary. It may also be appropriate for some felony probation or parole violators who commit technical or misdemeanor violations. A correctional probation officer is statutorily restricted from having more than 25 community controllees on his or her caseload. Violation of any community control condition may result in revocation by the court and imposition of any sentence which might have been imposed originally.

As with other forms of supervision, all the standard terms and conditions of standard probation apply to persons on community control. In addition to those conditions, the statute suggests that the court impose more contact with correctional probation officers, confinement to the residence except during work hours, mandatory public service, and electronic monitoring. Some sex offenders are placed on sex offender community control for heightened supervision, in which the additional sex offender conditions discussed in the section on sex offender probation would also apply.

Electronic monitoring is often used in community control cases to track the offender's movement or monitor compliance with terms of confinement to the residence. Section 948.03(3)(a)1, F.S., gives the department the discretion to place community controllees on electronic monitoring. However, the department does not exercise this discretion because of substantial case law that an offender's failure to submit to electronic monitoring ordered by the department cannot be a basis for revocation of community control.

Pretrial Intervention

The state of Florida operates or oversees a number of different pretrial intervention programs, such as drug courts. The criminal justice system diverts some of the

least serious offenders into these programs. These programs have conditions similar to probation, including fees, restitution, public service, and counseling to prevent a return to criminal behavior.

The chief judge of each circuit appoints an advisory committee that includes representatives of the prosecution, defense, and others to oversee the programs. Admission is limited to first time offenders who are charged with a third degree felony or less. Prior agreement of the state attorney and any victim is required, and the participant must waive speedy trial for the duration of the program. If the participant successfully completes the program, the state dismisses the charges and he or she avoids a criminal record. Noncompletion of the program results in normal prosecution of the case.

Other Forms of Supervision

The department supervises a limited number of post-prison offenders on parole, conditional release, and control release. The provisions and conditions for these programs are outlined in Chapter 947, F.S., which deals with the Florida Parole Commission. This type of term of supervision is ordered by the commission rather than the sentencing court. Eligibility for parole was closed in 1983 when the sentencing guidelines were established.

The conditional release program applies to certain inmates convicted for committing very serious crimes who are released from incarceration prior to completion of their sentence due to application of gain time credits. These inmates must serve the remainder of their full sentence on community supervision.

METHODOLOGY

Senate staff examined Chapter 948, F.S., and reviewed referenced statutes and corresponding procedural rules. Staff reviewed literature describing Florida's community supervision programs and relevant literature provided by the Department of Corrections, Office of Community Supervision.

Staff carefully reviewed information previously developed or obtained by predecessors, including materials and comments provided by representatives of the Governor's Office, the Department of Corrections, prosecutors, defense counsel, the judiciary, and the Florida Corrections Commission. This included a videotape of a live and videoconference meeting held in August 2001, to

discuss amendments to Chapter 948, F.S. In addition, staff solicited current input.

FINDINGS

Reorganization of Chapter 948, F.S., would result in a clearer presentation of the statutory requirements for and limitations of the community supervision. Reorganization would break out different forms of supervision into separate sections and make it easier for judges, practitioners, and the public to find relevant information. It is possible to accomplish this reorganization without substantive change in the law.

Staff found that the following changes would improve the organization and useability of Chapter 948, F.S.:

1. Section 948.001(2), F.S. – Addition of language including the statutory two year limitation on duration of community control to the definition of community control.
2. Section 948.01(1), F.S. – Addition of sentence moved from s. 948.01(4), F.S., requiring that sanctions imposed by order of the court shall be commensurate with the seriousness of the offense.
3. Section 948.01(7), F.S. – Addition of language moved from s. 948.01(1), F.S., prohibiting the use of private providers.
4. Section 948.011, F.S. – Amendment of the tag line and body of the section to correct the phrase “place into community control as to imprisonment.” It is apparent that the words “an alternative” were omitted, and that the phrase should be “place into community control as an alternative to imprisonment.”
5. Creation of a new section regarding split sentences using language moved from ss. 948.01(6) and 948.01(11), F.S.
6. Creation of a new section regarding administrative probation including new language clarifying the department’s authority to establish procedures, and also using language moved from ss. 948.01(1) and 948.01(15), F.S.
7. Section 948.03, F.S. – Revision of this section to cover only standard terms and conditions of probation that do not require oral pronouncement by the court. Creation of separate sections concerning terms and conditions of community control, sex offender probation, and drug offender probation. Creation of separate section concerning special terms and conditions of probation or community control that require oral pronouncement by the court.
8. Section 948.03(14), F.S. – Addition of a reference to drawing of “other biological specimen” to conform with requirements of s. 943.325, F.S., that certain offenders submit to drawing of “blood or other biological specimens.”
9. Creation of a separate section regarding residential treatment as a condition of probation or community control using language moved from s. 948.03(7), F.S.
10. Creation of a separate section regarding work programs as a condition of probation or community control using language moved from s. 948.03(8), F.S.
11. Creation of a separate section regarding education and learning as a condition of probation or community control using language moved from s. 948.03(9), F.S.
12. Creation of a separate section regarding batterers’ intervention programs as a condition of probation or community control using language moved from s. 948.03(12), F.S.
13. Creation of a separate section regarding special terms and conditions of probation or community control using language moved from ss. 948.01(n) and (o) and 948.03(6), F.S. Include new language specifying that special terms and conditions must be orally pronounced by the court and included in the written order, which is in accordance with case law.
14. Section 948.06, F.S. – Division of this section concerning violation and revocation into logical subsections, and movement of language concerning duties of law enforcement agency upon arrest of sex offender to separate section.
15. Section 948.10, F.S. – Creation of new subsections, including: a subsection concerning persons who are ineligible for community control using language moved from s. 948.01(10) F.S.; a subsection concerning duration of community control and amount of restitution using language moved from s. 948.01(4), F.S.; a subsection

concerning violation procedures using language moved from s. 948.01(9), F.S.; and a subsection concerning early termination using language moved from s. 948.01(5), F.S.

16. Creation of a separate section concerning terms and conditions of community control and criminal quarantine community control. For the subsections concerning community control, it would be appropriate to use language moved from s. 948.03(1) and (2), F.S. Additional language would be necessary to make it clear that the standard conditions of probation are included in the standard conditions of community control. The subsection concerning criminal quarantine community control should be composed using language moved from ss. 948.01(14) and 948.03(2)(b), F.S.
17. Section 948.11, F.S. – References concerning electronic monitoring should be consolidated, including the creation of new subsections using language moved ss. 948.03(3) and 948.09(2), F.S.
18. Creation of a separate section concerning requirements of law enforcement agencies upon arrest of a sex offender using language moved from s. 948.06(2), F.S.
19. Creation of a separate section setting out the prohibition against private entities providing probation services for offenders sentenced by the circuit court using language moved from s. 948.01(1), F.S.
20. Creation of a separate section concerning drug offender probation using language moved from s. 948.01(13), F.S.
21. Creation of a separate section concerning sex offender probation and sex offender community control using language moved from s. 948.03(5), F.S.
22. Creation of a separate section concerning diagnosis and evaluation of certain sex offenders in community control using language moved from s. 948.03(4), F.S.

23. Creation of a separate section concerning conditions for authorizing persons convicted of certain sex crimes from living out of state using language moved from s. 948.03(6), F.S.

In addition, staff found that it may be appropriate to repeal the following sections. However, repeal of these sections would constitute substantive change in the statute.

1. Sections 948.001(3) and 948.01(14), F.S. – These subsections concern “criminal quarantine community control.” This variation of community control may only be imposed upon persons who violate s. 775.0877, F.S., concerning criminal transmission of the HIV virus. This is not used by the courts, perhaps because the designated terms and conditions can be imposed as a part of standard community control.
2. Sections 948.001(6), 948.01(3), 948.034, and 948.035, F.S. – Community residential drug punishment centers have never been funded and are not in use. The existence of reference to this unavailable program causes confusion, especially for judges who are new to the criminal bench. The department feels that other drug treatment options are available to the sentencing.
3. Sections 948.50 and 948.51, F.S. – The Community Corrections Partnership Act is not funded and is no longer used as a community corrections strategy.
4. Section 948.90, F.S. – Local offender advisory councils are no longer used as part of the community corrections strategy.

RECOMMENDATIONS

Staff recommends that a proposed committee bill be prepared to implement the findings made in this report, including any additional changes that may be necessary to clarify Chapter 948, F.S. In order to preserve the integrity of the committee bill as a non-substantive reorganization of the chapter, staff does not recommend that the proposed committee bill include any substantive changes.